IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 26 of 2004
in
SPECIAL CIVIL APPLICATION No. 3875 of 2003

with

LETTERS PATENT APPEAL Nos. 27 to 549 of 2004

with

LETTERS PATENT APPEAL Nos. 572 to 574 of 2004
with
CIVIL APPLICATION Nos.764,765 and 767 of 2004

with

LETTERS PATENT APPEAL Nos. 1680 to 1719 of 2004
with
CIVIL APPLICATION Nos. 9518 of 2003 and 10045 of 2003

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
MANIBEN VIRAJI AND ORS.

Appearance:

1. LETTERS PATENT APPEAL No. 26 of 2004 and Others.

MR. ARUN D. OZA, GOVERNMENT PLEADER with

MS.HARSHA N.DEVANI,ASSISTANT GOVERNMENT PLEADER

for the Appellant (as Her Ladyship then was).

MR. SHALIN N MEHTA for the Respondents.

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

and

HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 14/10/2004

C.A.V. JUDGEMENT

(Per : HON'BLE DR.JUSTICE J.N.BHATT)

1. In this group of Letters Patents Appeals, by invocation of Clause-15 of the Letters Patent, the State of Gujarat, as well as, the workmen - labourers have assailed adverse directions against them in the judgement rendered in group of Writ Petitions, being Special Civil Application Nos.3875 of 2003 to 4399 of 2003, decided by the Learned Single Judge, on 9th April, 2003. The group of Writ Petitions had been filed by the State of Gujarat. The Labour Court, Surat, had passed two common awards dated 13th June, 2002; one, in Reference (L.C.S.) Nos.47 of 1999 to 51 of 1999, 15 of 1999 to 84 of 1999, 146 of 1999 to 151 of 1999, 186 of 1999 to 361 of 1999, and the second common award was, also, passed on the same date i.e. 13th June, 2002, covering Reference Nos.205 of 1995 to 622 of 1995.

2. Let it be, also, mentioned that the Labour Court in both the awards has granted similar benefits, as well as, given similar directions against the State of Gujarat and in favour of the workmen. One of the directions, issued by the Labour Court in the common awards, has been that the workmen will submit detailed Residential Address, Ration Card, Election Card or any other Government document along with the Certificate of Birth-Date to the Executive Engineer (4), Division-I, at Ukai, Taluka:Songarh, District:Surat, for further actions and, also, further directed the State Government to prepare the Seniority List of the workmen covered by those two common awards accordingly. It is, also, clear from the impugned awards of the Labour Court that the Seniority List of the workmen, to be prepared on the detailed information to be furnished by the workmen, has

to be considered for the cases of the workmen, and to further consider for the posts, which have been sanctioned but are unfilled and, wherein, the Government has approved, for filling-up, such vacant sanctioned posts. The workmen, admittedly, are not given the benefit of back-wages for the intervening period in the awards, as well as, they are not granted continuity of service, for obvious reasons, which means no regularisation or continuity, but upon fulfilment of criteria and direction, fresh appointments.

3. The workmen were working at the relevant time as daily-wagers in the Irrigation Department of the State of Gujarat. They were engaged, as such, for a Dam Project as daily-wagers. It has been the case of the workmen that they have worked for the period, commencing from two years to eighteen years on the basis of "daily-wages". There were more than 500 daily-wagers, as per the list produced in the Labour Court, in Reference under Section 10 of the Industrial Disputes Act, 1947 ("I.D.Act").

4. As per the record, the number of labourers and workmen covered under two common awards exceeded 500 in both the References i.e.Reference No.205 of 1995, as well as, in Reference No.47 of 1995. The names and the particulars of the labourers, covered under the two common awards, has been described in Schedule `A', which has been treated to be part and parcel of the said two common awards, of the Labour Court.

5. On behalf of the workmen, it was alleged that their services were terminated, orally, and without any compliance of the provisions of Section 25F of the I.D.Act, despite the fact that each of them had completed more than 240 days in the year preceding his/her oral termination of service, which came to be accepted by the Labour Court and affirmed in Writ Petitions before the Learned Single Judge.

6. In 1995, the daily-wagers raised the Industrial Dispute against their oral termination by the Irrigation Department of the State of Gujarat. Since there was delay even before the conciliation proceedings, before the Conciliation Officer, the workmen had filed separate applications with a prayer to condone the delay for raising the Industrial Dispute, and considering the explanation tendered by the workmen, in their respective affidavits, showing sufficient cause for the delay caused in raising the Industrial Dispute, the Conciliation Officer had considered the delay and the Reference had been made to the Labour Court for adjudication of the

Industrial Dispute on merits, under Section 10 of the I.D.Act. The delay-condonation process invoked by the workmen and considered by the Conciliation Officer, appears to us, to be a novel pattern, and we do not propose to examine and consider the propriety and legality part of such a procedure adopted, as the same is not canvassed and raised in this group of Letters Patent Appeals. Obviously, therefore, it is kept open.

7. The Reference Orders were not challenged by the State Government by instituting appropriate proceedings. It was open for the State Government to challenge the said order of References made by the Commissioner of Labour on the ground that the References were not maintainable on account of delay on the part of the respondent-workmen. However, the said was not done for reasons best known to the State Government.

8. Thereafter, the State of Gujarat had raised preliminary objection to the adjudication of the References on merits on the ground that they were time-barred or that there was an inordinate delay in seeking the References. However, the Labour Court, upon consideration of the facts and circumstances and the relevant proposition of law on this score, rejected the condonation of delay raised by the State and proceeded to adjudicate the Industrial Dispute on merits and passed the common awards on 13th June, 2002. The Labour Court, thus, had rejected the contention on behalf of the State of Gujarat that there was delay and decided the Reference involving Industrial Dispute on merits.

9. The Labour Court, upon examination of the facts and circumstances, the documents and the oral evidence, `inter-alia' found that the workmen were, orally, terminated in violation of the provisions of Section 25F of the I.D.Act and rejected the contention of the State of Gujarat that all of them had abandoned the work. The Labour Court, also, observed that the plea of "completion of the work and no work" was not acceptable and, therefore, was rejected. The References were partly allowed by the Labour Court with certain directions to the State of Gujarat, without any grant of back-wages and continuity of service to the workmen.

10. One of the directions of the Labour Court has been to the employer-State to re-employ as a fresher, the workmen on the same terms and conditions prevailing prior to their termination, if and when work was found to be available and on the basis of Seniority List to be prepared on furnishing the information by the workmen.

11. Against the common awards recorded, on 13-06-2002, by the Labour Court, Surat, both the parties filed Writ Petitions in the High Court and challenged the award adverse to their interest. The Learned Single Judge, by his order and judgment, dated 09-04-2003, affirmed and confirmed the awards by rejecting the Writ Petitions in a detailed impugned common judgment. In this group of Letters Patent Appeal, under Clause-15 of the Letters Patent, the common judgment of the Learned Single Judge is in challenge by both the parties, insofar as, the directions and the observations of the Labour Court, as well as, by the Learned Single Judge, adverse to their interests are concerned. They are heard together upon request and are being disposed of by this common judgment.

12. We have, dispassionately, heard the marathon submissions advanced before us by the learned Advocates appearing for both the parties. In the course of the hearing, we have, also, been taken to the relevant documentary and oral evidence led by the parties and relied upon by the Labour Court and the Learned Single Judge. We have, also, seriously, considered the relevant propositions of law and the relevant provisions of the I.D.Act. We have, also, given our anxious thoughts and considerations to the text and tenor, the colour and content of the common awards of the Labour Court, as well as, the common judgment of the Learned Single Judge.

13. The contention of the Department that the labourers and the daily-wagers were working at the site of the Dam of the Irrigation Department and that such a Department is not an "Industry" as defined in Section 2 (j) of the I.D.Act, is not pressed in this group of Letters Patent Appeals, as it is covered by the Full Bench decision of this Court rendered in "Gujarat Forest Producers, Gatherers & Forest Workers Union Vs. State of Gujarat, 2004 (2) GLR 1488". We are, therefore, not called upon to consider the question as to whether the said Department is covered by the definition of Section 2 (j) of the I.D.Act, as an "Industry" in this group of Letters Patent Appeals, and, therefore, it would not be necessary for us to consider and examine, minutely, the validity and the legal aspect involved in this proposition.

14. The contention that the delay in Reference will vitiate the awards of the Labour Court has not been accepted by the Labour Court, as well as, the Learned Single Judge. In our opinion, also, mere delay without

anything more `ipso-facto', in all cases, invariably, could not defeat the legality of the Reference. This view is, also, reinforced by the decision of the Hon'ble Supreme Court in the case of "Ajaib Singh Vs.Sirhind Cooperative Marketing-cum-Procession Service Society Limited and Anr., (1999) 6 SCC 82". It has been observed in the said decision that no Reference to the Labour Court can generally be questioned on the ground of delay alone.

15. Even, in case delay is shown to be existing, the Tribunal, the Labour Court or the Board, dealing with the case can appropriately mould the relief by declining the grant of back-wages to the workmen till the date he raised the demand regarding his illegal termination / retrenchment or dismissal. The Court may, also, in appropriate cases, direct the payment of part of the back-wages instead of full back-wages. Our view is, also, further reinforced by the decision in "Mahavir Singh Vs. U.P.State Electricity Board and Ors., (1999) 9 SCC 178".

16. It will be material to mention, at this stage, that the Hon'ble Apex Court in "Sapan Kumar Pandit Vs. U.P.State Electricity Board and Ors., (2001) 6 SCC 222", has, in clear terms, observed that the real test was whether the Industrial Dispute was existing on the date of Reference for adjudication. In that case, the Industrial Dispute came to be raised by the workmen after 15 long years of termination of service. In "U.P.State Electricity Board Vs. Rajesh Kumar, 2004 (1) SCALE 13", the Industrial Dispute was raised by the workman after 19 years and it was observed by the Hon'ble Supreme Court, answering the plea of delay raised by the Management / Employer, that it was open for the Management / Employer to question the very Reference made by the State Government. The validity of the Reference had not been questioned. Thereafter, the Management participated in the proceedings before the Labour Court and suffered the award, and the adverse award passed by the Labour Court against the Employer was, also, unsuccessfully, challenged before the High Court.

17. The Labour Court and the Learned Single Judge, on correct appraisal and analysis of the factual profile and the evidence, has found that the workmen were terminated, orally, in violations of the principles and provisions incorporated in Section 25F of the I.D.Act, as workers had continuously worked for more than 240 days in an year, preceding the date of termination. It was in this context, it has been held by the Labour Court and the

Single Bench of this High Court that there has been violation of the provisions of Section 25F and the workmen are, therefore, entitled to the protection of such direction and that cannot be denied on the ground that they were daily-rated workers. The proposition of law on this score is, also, settled by the Hon'ble Apex Court in "Rattan Singh Vs. Union of India and Anr., (1997) 11 SCC 396".

18. The finding of breach of Section 25F of the I.D.Act would entitle the workmen to be reinstated in their original service on the same terms and conditions on which they were working earlier. However, the Labour Court has, merely, directed the employer - State of Gujarat to re-employ the workmen only on daily-wage basis, if and when the work is found to be available. The Seniority List is directed to be prepared by the employer upon the basis of information to be supplied by the workmen in the peculiar facts and circumstances. The contention that the Labour Court ought to have ordered reinstatement in service on the same terms and conditions is reiterated before us. The discretion exercised by the Labour Court and confirmed by the Learned Single Judge, could not be said to be unreasonable and unjust, requiring our interference in the light of the peculiar facts and circumstances of the case.

19. After having taken into consideration the overall factual profile emerging from the record of the present case, the factual assessment and appraisal based on evidence made by the Labour Court and affirmed by the Learned Single Judge, the circumscribed parameters of Review Jurisdiction of the Writ Court and the jurisdiction of the Appellate Court against the judgment and order of the Learned Single Judge and in the back-drop of the peculiar facts and circumstances of the workmen covered under both the common awards and the common judgment of the Learned Single Judge, we are of the opinion that there is no any fit and appropriate case for interference in exercise of our powers under Clause-15 of the Letters Patent.

20. In the result, the entire group of Letters Patent Appeals deserves to be dismissed. All the Letters Patent Appeals, in this group, shall, therefore, stand dismissed without any order as to costs.

21. As this group of Letters Patent Appeals has been decided and dismissed, all the Civil Applications therein, also, now, would not survive and are, therefore, dismissed accordingly without costs.

(DR. J. N. BHATT, J.)

(D. N. PATEL, J.)

/shamnath